HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2153 of 1992

Petitioner		Mahendra Pandey aged 31 years, son of Shri Tapsi Pandey, resident of C/o Kamta Prasad Pandey, Railway Head Booking Clerk, Bhandara, P.O. Bhandara, District Bhandara, Mahrashtra (removed Rakshak No. 1182, R.P.F. Bilaspur, S.E. Railway).
	Versus	
Respondents	1.	Union of India, through : the Director General, Railway Protection Force, Railway Bhawan, New Delhi.
	2.	Chief Security Commissioner (Inspector General) Railway Protection Force, South East Central Railway Zonal Office, Bilaspur (C.G.)
	3.	Divisional Security Commandant, Railway Protection Force, South Eastern Railway, Bilaspur-495004

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri V. K. Pandey, Advocate for the petitioner.

Dr. N. K. Shukla, Senior Advocate with Shri Dilip Dubey, Advocate for the Respondents No. 2 and 3.

ORAL ORDER

(9th January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner along with one Daniel Ingley was prosecuted under section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966 for attempt to theft committed by both of them on 29.11.1981. Learned Railway Magistrate, Raipur vide judgment and order dated 27.1.1986 passed in Criminal Case No. 457/1982 convicted for the said offence and sentenced both of them to undergo one year's rigorous imprisonment. Learned Additional Sessions Judge, Raipur vide judgment and order dated 2.8.1986 passed in Criminal Appeal No. 11/1986 maintained and affirmed the conviction and sentence

passed by the Railway Magistrate. The judgment and order passed by the Third Additional Sessions Judge, Raipur was challenged in Criminal Revision No. 431/1986 before the High Court of Madhya Pradesh at Jabalpur. The High Court by its judgment and order dated 19.8.1991 allowed the revision and set aside the judgment of conviction and sentence passed against the present petitioner and co-accused Daniel Ingle. The petitioner was accordingly acquitted of the offence.

2. The respondents No. 2 and 3 proceeded against the petitioner and Shri Daniel Ingley, departmentally and after holding an enquiry the order of removal was passed. The petitioner preferred a statutory appeal and the appellate authority by order dated 17.11.1984 allowed the appeal setting aside the removal order and directed to conduct *de novo* inquiry. The enquiry was conducted ex-parte and again the order of removal dated 7.9.1983, which was passed pursuant to the first enquiry, was confirmed in the second enquiry

3. The petitioner filed this petition on 23.6.1992 praying that the order of removal dated 7.9.1983 be quashed because the entire departmental enquiry was proceeded on the basis of the facts of the criminal case. The petitioner had already been acquitted in criminal case.

4. Co-accused Daniel Ingley also filed M.P.No. 2121 of 1992 before the High Court of Madhya Pradesh at Jabalpur praying for the same relief. M.P.No. 2121 of 1992 was decided by the learned Single Judge of the High Court of M.P. vide order dated 27.10.1998.

5. On creation of the High Court of Chhattisgarh this petition was transferred to this Court. The incident involved in both the matters is the same, enquiry was also conducted together, criminal trial also took place together and the same conviction and sentence was passed

against both the petitioner and Shri Daniel Ingley. The petitioner and Shri Daniel Engley had filed criminal revision together wherein they succeeded and the conviction and sentence was set aside and they were acquitted accordingly.

6. Dr. Shukla, learned Senior counsel with Shri Dilip Dubey, learned counsel appearing for the respondents No. 2 and 3 submits that the petitioner should have preferred regular appeal against the order of removal. The petitioner having failed to file statutory appeal, it does not warrant interference and this petition should not be entertained. This very argument was advanced by the respondents in the case of Shri Deniel Ingley also. Learned Single Judge of the High Court of M.P. at Jabalpur in M.P. No. 2121/92 after having considered all the fats came to the conclusion as under:

> "The thrust of the matter is that the petitioner was not removed from the service because of the departmental proceeding. The removal of the petitioner was solely on the basis of judgment of conviction passed by this Court in criminal revision. Once the order of removal is passed, the relationship of employer and employee cease and do not exist. The contention that the de novo enquiry was pending against the petitioner does not deserve acceptance. As the judgment of conviction has been set aside and the clock has to be put-back to its original position. The petitioner is entitled to be reinstated but there shall be no order for grant of back wages. At this juncture, Mr. Nagu expressed that on his reinstatement the Department may initiate departmental proceeding again. Mr. Mukherjee is not in a position to reply to the same, as he has no instructions in this regard. It is well settled in law that initiation of a departmental proceeding after an order of acquittal, though permissible, has to depend on many a factor. The present case has a chequered history. The departmental proceeding was initiated way back in 1981, but it did not reach its logical end. The Appellate Authority had remanded the matter for de novo enquiry. The disciplinary authority did not complete the enquiry and relying upon the judgment of conviction removed the

petitioner from service but eventually that order/judgment of conviction was set aside by this Court in criminal revision in the year 1991. Thereafter no steps have been taken. It is to be seen on the anvil of justice, equity and fair play whether a proceeding should re-commence after 17 years. This is not to be forgotten that the allegations of the departmental proceeding and a criminal revision were the same. Accordingly it is directed that the petitioner should be reinstated in service within six weeks from today and the departmental enquiry should not be recommenced. This direction is passed keeping in view the long lapse of time, the acquittal in the criminal case and the silence maintained by the authority after the representation was made by the petitioner.

In the result, the writ application is allowed to the extent indicated above. However, there shall be no order as to costs."

7. I have heard learned counsel for the parties and perused the records of the case as well as the order dated 27.10.1998 passed by learned Single Judge of the High Court of Madhya Pradesh in M.P.No. 2121/1992. I am in agreement with the order passed by the High Court of Madhya Pradesh. Even otherwise this case was filed in the High Court of Madhya Pradesh at Jabalpur and the facts and offence involved are one and the same. As such, this petition is allowed accordingly.

8. With regard to the back wages, learned counsel for the petitioner submits that similarly situated Shri Daniel Ingley was granted relief on 27.10.1998 and back-wages was not granted to him. The petitioner had been kept waiting and this matter could not be disposed of earlier when the same offence and facts were involved. Learned counsel for the petitioner submits that the petitioner was not employed gainfully elsewhere, therefore, the petitioner be granted 100% back wages in the facts and circumstances of the case. Back wages were not granted to Shri Daniel Ingley, the petitioner in M.P.No. 2121/1992, which was allowed vide order dated 27.10.1998. This Court is of the opinion that

82

in the facts and circumstances of the case, the petitioner is entitled to 50% back wages from November, 1998, from the date when the similarly situated other person namely Shri Daniel Ingley was granted relief by the High Court of M.P., till the petitioner is reinstated in service.

9. The petition is allowed with the direction that the petitioner be reinstated in service as early as possible, preferably within a period of three months from today.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge

Thakur